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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/441,683

11/16/1999

JOSEPH B. SLATER

KOS-11702/03

4789

25006

7590

01/13/2004

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EXAMINER

SMITH, ZANDRA V

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/441,683

Applicant(s)

SLATER, JOSEPH B.

Examiner

Zandra V. Smith

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-2, 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 4-7 is/are allowed.
- 6) ☒ Claim(s) 8 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Lemelson (5,845,646)***.

As to **claim 8**, Lemelson discloses a system and method for treating select tissue in a living being, comprising:

a probe body (fig. 11) having a window (91, fig. 11) oriented toward a sample;

a sampling beam (92, fig. 11) that may carry Raman (col. 1, lines 15-20) wavelengths through the window for analysis ;

a conduit (95, fig. 11) carrying a fluid to the surface of the window; and

a structure (94, fig. 11) operative to flood the window with fluid (col. 14, lines 12-20 and lines 50-60). The embodiment of figure 11 uses visible light or laser energy, however as disclosed in col. 8, lines 55-60 it is well known to use Raman wavelengths. It would have been obvious to one having ordinary skill in the art at the time of invention to use Raman wavelengths because certain body constituents produce distinguishable Raman spectra when illuminated with the proper wavelength and to analyze and detect or diagnose the tissue and to distinguish plaque deposits from healthy tissue at the walls of blood vessels.

As to **claim 11**, Lemelson discloses everything claimed, as applied above, in addition the fluid is a liquid (col. 14, lines 20-23).

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As to **claim 13**, Lemelson discloses everything claimed, as applied above, in addition fluid would inherently enter the sample after flooding the window since the scope is inside the body.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lemelson (5,845,646)* in view of *Alfano et al. (5,261,410)*.

As to **claims 10 and 12**, Lemelson discloses everything claimed, as applied above, with the exception of the liquid being a solvent or a gas, however to do so is well known as taught by Alfano. Alfano discloses an endoscope used to determine if a tissue is malignant that includes a liquid, gas, or solvent as the fluid (col. 11, lines 35-40). It would have been obvious to one having ordinary skill in the art at the time of invention use a solvent or gas to dissolve contaminants on the window.

#### ***Allowable Subject Matter***

Claims 1-2 and 4-7 are allowable over the prior art of record.

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, taken alone or in combination, fails to disclose or render obvious part of the fluid passing through an aperture to ensure that the sample does not reach the window.

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***Response to Arguments***

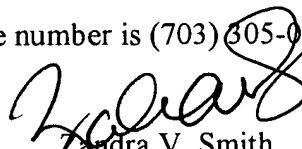
Applicant's arguments filed 06 November 2003 have been fully considered but they are not persuasive. Applicant argues that Lemelson does not provide the use of Raman in a diagnostic mode, however as disclosed in col. 10, lines 55-60 a Raman diagnostic mode is provided where the light is reflected back to a fiber inside the catheter for wavelength collection.

***Fax/Telephone Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (703) 305-7776. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703)308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0540.

  
Zandra V. Smith  
Primary Examiner  
Art Unit 2877

1/12/2004